

IN THE CIRCUIT COURT
OF THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)

Plaintiff,)

-vs-)

PAUL SAUGET, individually and)
SAUGET AND COMPANY, a Delaware)
corporation,)

Defendant.)

RECEIVED
ENFORCEMENT PROGRAM
NO. 7 1981
Environmental Protection Agency

COMPLAINT FOR INJUNCTION AND OTHER RELIEF

NOW COMES Plaintiff, PEOPLE OF THE STATE OF ILLINOIS,
by Tyrone C. Fahner, Attorney General of the State of Illinois,
and complains of PAUL SAUGET individually, and SAUGET AND
COMPANY, a Delaware corporation, as follows:

COUNT I

1. This Complaint is brought by way of the statutory power of the Attorney General to file a civil action to enjoin violations of an Order entered by the Illinois Pollution Control Board (hereafter referenced the "Board"), pursuant to Section 33(d) and 42(d) of the Illinois Environmental Protection Act, Ill. Rev. Stat., 1979, ch. 111 1/2, pars. 1033(d) and 1042(d) (hereafter referenced the "Act") and to recover penalties.

2. This Complaint is brought at the request of the Illinois Environmental Protection Agency.

3. This Complaint is also brought pursuant to the terms and provisions of Section 42(a) of the Act, Ill. Rev. Stat., 1979, ch. 111 1/2, par. 1042(a), which states:

"a. Any person that violates any provisions of this Act or any regulation adopted by the Board or any permit or term or condition thereof, or that violates any determination or Order of the Board pursuant to this Act, shall be liable to a civil penalty of not to exceed \$10,00 for said violation and an additional civil penalty of not to exceed \$1,000 for each day during which violation continues;" (emphasis added).

4. The Defendant, Paul Sauget, is an officer and principal owner of Sauget and Company, a Delaware corporation.

5. The Defendant, Sauget and Company, is a corporation organized under the laws of the State of Delaware and until November 15, 1973 was authorized to do business in Illinois.

6. On November 15, 1973 the Secretary of State of the State of Illinois revoked the authority of Sauget and Company to transact business in the State of Illinois.

7. Prior to April 26, 1977, the Defendants Paul Sauget and Sauget and Company, operated a refuse disposal site of approximately 35 acres located in Township 2 North, Range 10 West of the Third Principal Meridian, Centerville^{RE} Township, St. Clair County, Illinois. (hereinafter the "site") Said refuse disposal site consists of two (2) parts which are separated by the right-of-way of the Alton and Southern Railroad. The part of the refuse disposal site North of the Railroad is bounded on the South by the Railroad; on the West by a line parallel to, and approximately 300 feet easterly of the Mississippi River; on the North by Riverview Avenue, and on the ~~West~~^{EAST} by the Levee; all excluding the landfill of Monsanto Company and the fly-ash pond of Union Electric Company.

The part of the refuse disposal site South of the Railroad is bounded on the North by the Railroad; on the East by the Levee; on the South by Redhouse Road; and on the West by a road which is generally parallel to, and 1200 feet East of the Mississippi River; all excluding an area at the South-eastern most corner of such part, which area has an approximate width (measured perpendicularly to the Levee) of 500 feet, and an approximate length (measured parallel to the Levee) of 1200 feet.

8. The Board is empowered to hear complaints charging violations of the Act and/or of the Board's Rules and Regulations pursuant to Section 5(d) and Section 33 of the Act, Ill. Rev. Stat., 1979, ch. 111 1/2, pars. 1005(d) and 1033.

9. The Attorney General filed a Complaint with the Board, on behalf of the Illinois Environmental Protection Agency (hereafter referenced the "Agency") on March 16,

1977, and filed an Amended Complaint on August 5, 1977 alleging that the Defendants had committed certain violations of the Act and the Board's Rules and Regulations at the site (PCB #77-84), including, but not limited to, allegations that Defendants failed to place a compacted layer of at least two feet of suitable material over the entire portion of the refuse disposal site operated by them.

10. The Board after a hearing and deliberations on the Amended Complaint referred to in Paragraph #9 found the Defendants to have caused the violations set forth in the Opinion and Order of the Board duly entered on August 24, 1978. A copy of that Opinion and Order is attached hereto as Exhibit A and is incorporated by reference herein.

11. The Opinion and Order of the Board (Exhibit A) states as follows:

1. Paul Sauget and Sauget and Company are found to be in violation of Rule 5.07(b) of the Public Health Regulations and Section 21(b) of the Act. The remaining allegations are dismissed.
2. Respondents shall comply with all the provisions of the stipulation incorporated by reference as if fully set forth herein. Respondents shall file a performance bond with the Agency in the amount of \$125,000. Respondents shall jointly and severely pay a penalty of \$5,000 pursuant to the terms of the stipulated agreement."

12. Rule 5.07(b) of the Illinois Department of Public Health Rules and Regulations for refuse disposal sites provided as follows:

"5.07. COVER. Cover material shall be of such quality as to prevent fly and rodent attraction and breeding, blowing litter, release of odors, fire hazards, and unsightly appearance, and which will permit only minimal percolation of surface water when properly compacted. Cover shall be applied as follows:

- (b) Final Cover. A compacted layer of at least two (2) feet of material

in addition to the daily cover shall be placed over the entire surface of of all completed portions of the fill within six (6) months following the final placement of refuse. Final cover shall be graded as provided on the approved plan and to prevent ponding. The surface of the final cover shall be maintained at the plan elevation at all times, by the placement of additional cover material where necessary.

13. That pursuant to the stipulation (which is attached hereto as Exhibit B and is incorporated herein by reference) incorporated by the Board Order in PCB 77-84 the Defendants were required to have placed final cover material over 20% of the site during each six (6) month period after the date upon which the Board entered the Order approving the settlement stipulation. As of August 24, 1980, (24 months from the date of the Board Order) 80% of the site should have had final cover applied.

14. That as of the date of filing of this Complaint Defendant has not complied with said Opinion and Order of the board in that Defendants have failed to apply final cover material over at least 80% of the site.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays:

1. That the Court enter a permanent injunction against the Defendants which require and order the Defendants to cover the site in compliance with the Order of the Board.

2. That the Court impose a civil penalty against each of the Defendants in the amount of \$10,000 plus \$1,000 per day for each day the Defendants have failed to comply with the Order of the Board entered August 24, 1978.

3. That the Court tax and assess all costs of this proceeding ~~against the Defendants.~~

4. That the Court grant the Plaintiff any other relief it deems appropriate.

COUNT II

1-11. Complainant realleges and incorporates by

reference paragraphs 1-11 of Count 1 as paragraphs 1-11 of this Count II.

12. As provided in the Opinion and Order of the Illinois Pollution Control Board PCB #77-84 attached hereto as Exhibit A, the Defendants were required to file a performance bond with the Agency in the penal amount of \$125,000.

13. That as of the date of the filing of this Complaint the Defendants have not filed with the Agency the aforementioned bond in the penal amount of \$125,000, and, therefore, the Defendants have violated the Opinion and Order of the Illinois Pollution Control Board in PCB #77-84 entered on August 24, 1978.

WHEREFORE, the PEOPLE OF THE STATE OF ILLINOIS, prays:

1. That the Court enter a permanent injunction against the Defendants which require and order them to file a performance bond with the Agency in the penal amount of \$125,000.

2. That the Court impose a civil penalty against each of the Defendants in the amount of \$10,000 plus \$1,000 for each day the Defendants have failed to comply with the Order of the Board entered August 24, 1978.

3. That the Court tax and assess all costs of this proceeding against the Defendants.

4. That the Court grant to the Plaintiff any other relief it deems appropriate.

ENVIRONMENTAL PROTECTION AGENCY,

BY:

TYRONE C. FAHNER
ATTORNEY GENERAL

OF COUNSEL:

Vincent W. Moreth
Assistant Attorney General
500 South Second Street
Springfield, IL 62706
(217) 782-9031



Illinois Environmental Protection Agency

TELEPHONE: 217/782-3397

June 26, 1978

Mr. William Barzano
Assistant Attorney General
Environmental Control Division
500 South Second Street
Springfield, Illinois 62706

Re: EPA v. PAUL SAUGET
PCB# 77-84
IEPA# 3602

Dear Bill:

Enclosed please find the Statement of Stipulated Settlement in the above-captioned matter executed by the Agency.

Thank you for your cooperation and representation in this matter.

Very truly yours,

Delbert D. Haschemeyer
Manager, Enforcement Programs

DDH/cp

Enclosure

cc: T. Chiola
: Southern Region
: ~~E.O.S.~~
: E.P.

STATE OF ILLINOIS)
) SS
COUNTY OF ST. CLAIR)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
) Complainant,
)
) V.) PCB 77-84
)
PAUL SAUGET, individually, SAUGET AND)
COMPANY, a Delaware corporation, EAGLE)
MARINE INDUSTRIES, INC., a Missouri)
corporation, and RIVER PORT FLEETING)
INC., a Missouri corporation,)
)
) Respondents.)

STIPULATION, STATEMENT OF FACTS AND
PROPOSAL FOR SETTLEMENT

For purposes of settlement only, Respondents, PAUL SAUGET and SAUGET AND COMPANY, a Delaware corporation, by their attorney HAROLD G. BAKER, JR., and the Complainant, ENVIRONMENTAL PROTECTION AGENCY (hereinafter the "Agency"), by its attorney, WILLIAM J. SCOTT, Attorney General of the State of Illinois, do hereby stipulate and agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that the Statement of Facts is made and agreed upon for the purpose of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding unless the Illinois Pollution Control Board (hereinafter the "Board") approves and disposes of this matter on each and every one of the terms and conditions of settlement set forth herein. This document is admissible only

for the purposes of this cause and may not be used in any other proceeding between any of these parties and others. None of the matters covered herein may be construed as facts or admissions of fact or admissions against interest for any purpose other than this proceeding.

STATEMENT OF FACTS

1. PAUL SAUGET, one of the Respondents, is an officer and the principal owner of SAUGET AND COMPANY, a Delaware corporation.

2. SAUGET AND COMPANY, one of the Respondents, is a corporation organized under the laws of the State of Delaware and, at all pertinent times until November 15, 1973, was authorized to transact business in the State of Illinois.

3. Beginning in the fall of 1959 and continuing each and every day to on or about April 26, 1973, SAUGET AND COMPANY operated a refuse disposal site located in Township 2 North, Range 10 West of the 3rd Principal Meridian, Centerville Township, St. Clair County, Illinois.

The refuse disposal site consists of two (2) parts which are separated by the right-of-way of the Alton & Southern Railroad.

The part of the refuse disposal site north of the Railroad is bounded on the south by the Railroad; on the west by a line parallel to, and approximately 300 feet easterly of, the Mississippi River; on the north by Riverview Avenue; and on the west by the levee; all excluding the landfill of Monsanto Company and the fly-ash pond of Union Electric Company.

The part of the refuse disposal site south of the Railroad is bounded on the north by the Railroad; on the east by the levee; on the south by Red House Road; and on the west by a road (shown on Respondents' Exhibit No. 2) which is generally parallel to, and 1200 feet easterly of, the Mississippi River; all excluding an area at the southeastern most corner of such part, which area has an approximate width (measured perpendicularly to the levee) of 500 feet and an approximate length (measured parallel to the levee) of 1200 feet.

4. EAGLE MARINE INDUSTRIES, INC., one of the Respondents, is a corporation organized under the laws of the State of Missouri and presently owns a portion of said refuse disposal site formerly operated by Respondent SAUGET AND COMPANY. RIVER PORT FLEETING, INC., one of the Respondents, is a corporation organized under the laws of the State of Missouri and presently owns a portion of said refuse disposal site formerly operated by Respondent SAUGET AND COMPANY. On February 24, 1978, a motion to dismiss without prejudice was filed by the Agency with the Board regarding the Respondents EAGLE MARINE INDUSTRIES, INC. and RIVER PORT FLEETING, INC., based upon a Stipulation entered into by the Agency with said Respondents.

5. Respondent PAUL SAUGET and Respondent SAUGET AND COMPANY (hereinafter "said Respondents") have failed to place a final suitable cover of at least two (2) feet of suitable material over the entire surface of all completed portions of the refuse disposal site described in paragraph 3, although cover which said Respondents believed to be acceptable or suitable, or both, has been placed

on the site, despite notices from EPA to the contrary. Said final cover should have been placed upon the site prior to October 26, 1973.

6. The parties hereby agree that the Hearing Officer may instanter enter an order that the record of a prior proceeding (PCB 71-29) involving said Respondents shall be incorporated, pursuant to Board's Procedural Rule 320(c); into the record of this proceeding.

7. In PCB 71-29, Respondent PAUL SAUGET testified that he had been given permission from the Director of the Illinois Department of Public Health to use cinders as a cover material (R. 157 and 175) and this testimony was accepted by the Board. Therefore, cinders used by said Respondents as a cover material prior to the decision of the Board in PCB 71-29 on May 26, 1971 are accepted as cover material for the purposes of this stipulation, but not for that portion of the refuse disposal site operated after May 26, 1971. Furthermore, cinders shall not hereafter be used by said Respondents in complying with the provisions hereof.

8. In said Respondents' refuse disposal site, refuse was deposited commencing in the northern portion of the site in 1959 and continuing thereafter in a southerly direction.

9. The parties agree that the 1966 operating face shall be deemed to have been a straight line perpendicular to the levee running along the road at the south end of Union Electric's fly-ash pond (as shown in said Respondents' Exhibit No. 1).

10. The parties also agree that the 1971 operating face shall be deemed to have been a straight line parallel to, and 1200 feet southerly of, said 1966 operating face (as shown in said Respondents' Exhibit No. 2).

PROPOSED TERMS OF SETTLEMENT

A. As a result of the settlement discussions had and the control programs agreed to hereinafter, and partially heretofore implemented by said Respondents, the parties believe the public interest will be best served by the resolution of this enforcement action under the terms and conditions provided herein. In accordance with the procedure for settlement prescribed in Board's Procedural Rule 331, the parties offer this Stipulation, Statement of Facts and Proposed Terms of Settlement in lieu of a full evidentiary hearing.

B. This stipulation is expressly conditioned upon, and effective only with, approval hereof in all respects by the Board. All statements and agreements contained herein shall be null and void and of no effect and shall not be used in any further proceeding in the event that the Board fails to approve these Terms of Settlement in all respects.

C. Respondents, PAUL SAUGET and SAUGET AND COMPANY, admit the allegations contained in paragraph 15 of Count V of the Amended Complaint, in that each of them, since October 26, 1973, has failed to place a compacted layer of at least two (2) feet of suitable material over the entire portion of the refuse disposal site

August 24, 1978

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)

Complainant,)

vs.)

PCB 77-84)

PAUL SAUGET, individually, SAUGET AND)
COMPANY, a Delaware corporation, EAGLE)
MARINE INDUSTRIES, INC., a Missouri)
corporation, and RIVER PORT FLEETING)
INC., a Missouri corporation,)

Respondents.)

MR. WILLIAM J. BARZANO, JR., ASSISTANT ATTORNEY GENERAL, APPEARED
ON BEHALF OF THE COMPLAINANT.

MR. HAROLD BAKER APPEARED ON BEHALF OF THE RESPONDENTS.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Board upon a complaint filed March 16, 1977 by the Environmental Protection Agency (Agency). An amended complaint was filed August 5, 1977. The amended complaint alleges that Respondents Paul Sauget and Sauget and Company, operated a refuse disposal site of approximately 35 acres located in Township 2 North, Range 10 West of 3rd Principal Meridian, Centreville Township, St. Clair County, Illinois. The site is located partly within the limits of the Village of Sauget, Illinois and lies adjacent to the Mississippi River. It further alleges that the remaining Respondents presently own portions of the site. The amended complaint alleges that the site was run in such a manner as to violate Rule 305(c) of the Chapter 7: Solid Waste Regulations and Section 21 of the Act, Rule 203(a) of the Chapter 3: Water Pollution Regulations (Chapter 3) and Sections 12(a), 12(d) and 9(c) of the Environmental Protection Act (Act), and Rule 5.07(b) of the Public Health Regulations and hence a violation of Section 21(b) of the Act.

Upon a motion by complainant, Respondents, Eagle Marine Industries, Inc. and River Port Fleeting, Inc., were dismissed by a Board order of March 16, 1978. A hearing was held on June 20, 1978 at which the remaining parties presented a stipulation to the Board for acceptance. No testimony was given.

The stipulated agreement provides the following facts. Paul Sauget is an officer and principal owner of Sauget and Company. At all times pertinent until November 15, 1973 Sauget and Company was authorized to transact business in Illinois. Beginning in the fall of 1959 and continuing each and everyday to on or about April 26, 1973, Sauget and Company operated a refuse disposal site located at the site in question.

Eagle Marine Industries, Inc. presently owns a portion of said refuse disposal site formerly operated by Sauget and Company. River Port Fleeting, Inc. also presently owns a portion of the said disposal site. These Respondents agreed by stipulation to allow access to the site to remedy the situation and were dismissed by a previous Board order.

The stipulation further provides that Paul Sauget and Respondent Sauget and Company have failed to place a final cover of at least two feet of suitable material over the entire surface of all completed portions of the refuse site. Cover which Respondents believed to be acceptable or suitable, or both, has been placed on the site although the Agency gave notice to the contrary. Final cover should have been placed upon the site prior to October 26, 1973.

In PCB 71-29, which the parties agreed should be incorporated into this proceeding, the Board accepted testimony that Paul Sauget had been given permission by the Director of the Illinois Department of Public Health to use cinders as cover material. Thus for the purposes of the stipulation the parties agreed that cinders used by the Respondents as cover material prior to the Board decision in PCB 71-29 on May 26, 1971 are accepted as cover material but not for that portion of the site operated after May 26, 1971. Cinders shall not be used hereafter as cover material by Respondents.

At the disposal site, refuse was deposited commencing in the northern portion of the site in 1959 and continuing thereafter in a southerly direction. The parties agree that the 1966 operating face shall be deemed to have been a straight line perpendicular to the levee running along the road at the south end of Union Electric's fly ash pond. It is further agreed that the 1971 operating face shall be deemed to have been a straight line parallel to and 1200 feet southerly of the 1966 operating face.

Paul Sauget and Sauget and Company admit the allegations contained in paragraph 15 of Count V of the Amended Complaint, in that each of them, since October 26, 1973, has failed to place a compacted layer of at least two feet of suitable material over the entire portion of the refuse disposal site operated by them. They do not necessarily admit that final cover has not been placed upon the refuse disposal site, there having heretofore been disputes concerning the depth or the suitability, or both, of the final cover. These Respondents agree to place two feet of suitable cover material on said site in accordance with Rule 5.07(b) of the Rules and Regulations for Refuse Disposal Sites and Facilities. The stipulation provides a more detailed plan for placement of final cover. The stipulation provides that the final cover shall be of the quality agreed upon by the parties in May, 1978. If

there is any change in cover the Agency shall be notified. The agreement also provides conditions under which the time in which Respondents are to meet their obligations may be extended beyond the thirty (30) months stipulated for completion.

Respondents agree to file a performance bond of \$125,000.00 with the Agency. Respondents also agree to a penalty of \$5,000.00 to be paid in two monthly installments of \$2,500.00 per month. All other allegations shall be dismissed with prejudice.

The Board finds the stipulated agreement acceptable under Procedural Rule 331. The Board finds Respondents, Paul Sauget and Sauget and Company, in violation of Rule 5.07(b) of the Public Health Regulations and Section 21(b) of the Act. The remaining allegations are dismissed. In light of Section 33(c) of the Act the stipulated penalty of \$5,000.00 is appropriate. This is assessed jointly and severally. Respondents did have notice of cover requirements because of the previous enforcement case PCB 71-29 and considerable time has passed since the cover should have been applied. The Agency's definition of "suitable material" included in Exhibit A is acceptable for the purposes of the stipulated agreement.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

It is the order of the Pollution Control Board that:

1. Paul Sauget and Sauget and Company are found to be in violation of Rule 5.07(b) of the Public Health Regulations and Section 21(b) of the Act. The remaining allegations are dismissed.
2. Respondents shall comply with all the provisions of the stipulation incorporated by reference as if fully set forth herein. Respondents shall file a performance bond with the Agency in the amount of \$125,000.00. Respondents shall jointly and severally pay a penalty of \$5,000.00 pursuant to the terms of the stipulated agreement. Payment shall be by certified check or money order payable to:

Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 24th day of August, 1978 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board

heretofore operated by them. As stated in paragraph 5 hereof, they do not necessarily admit, however, that final cover has not been placed upon the refuse disposal site, there having heretofore been disputes concerning the depth or the suitability, or both, of the final cover.

D. Said Respondents agree to place two (2) feet of suitable cover material on said site in accordance with Rule 5.07(b) of the Rules and Regulations for Refuse Disposal Sites and Facilities (promulgated in 1966 by the Illinois Department of Public Health) as follows:

(1.) From the 1966 operating face through the 1971 operating face of the refuse disposal site, said Respondents agree to place suitable cover over the site, where necessary, to bring the total final cover to a depth of two (2) feet; cinders already in place used as a cover material north of the 1971 operating face of the site being acceptable as suitable cover material between the 1966 and 1971 operating faces of the site;

(2.) South of the 1971 operating face, said Respondents agree to place suitable cover material over the site, where necessary, to bring the total of final suitable cover to a depth of two (2) feet, excluding cinders already in place;

(3.) Such additional cover shall be placed on the site starting with that part south of the 1971 operating face;

(4.) Subject to extensions of time which may be granted under the provisions of paragraph G hereof, such final cover shall be placed over 20% of the site during each six (6) month period after the date upon which the Board enters an Order approving this settlement and such work on all parts of the site shall be completed within thirty (30) months of the date that the Board enters such Order.

E. The final cover used by Respondents during the month of May, 1978 and sampled by the Agency is satisfactory and acceptable to the Agency. In the event that Respondents hereafter change the type of final cover from that used in May, 1978 and sampled by the Agency, said Respondents shall notify Agency and cooperate

with it in taking samples of the proposed new type of final cover.

F. Except as hereinbefore specified, the final cover to be used by the Respondents must be "suitable." Neither the Board nor the Agency has heretofore officially adopted any definition of "suitable" cover. The Agency proposes to the Board that it adopt the definition attached hereto, marked Exhibit A and, by this reference, incorporated herein and made a part hereof. Respondents have not seen such definition until the date of the hearing at which this Stipulation is filed and, for that reason and others, do not approve, disapprove or agree to such definition. Respondents' final suitable cover hereafter used shall conform to such definition, if it be approved and adopted by the Board, subject to said Respondents' rights to seek a variance or variances from such definition.

G. Said Respondents' obligation to meet any time requirements set out herein shall be extended as the result of an act of God or by a circumstance beyond said Respondents' control or by the owners' use of the site in violation of the provisions of their Stipulation or by any other circumstance agreed to by the parties. Prompt written notice of the claimed applicability of this provision must be given to Agency by said Respondents, or either of them, or a claim for extension based upon a given set of facts is waived. Should the parties fail to agree on what circumstances shall excuse a delay in the performance or on the period of extension due, Respondents may submit the matter to the Board of resolution after a hearing which may be called or requested by either the Agency or the Respondents, or both, in accordance with Board Procedural

Rule 334(b)(1). Any such hearing must be requested within thirty (30) months of the date upon which the Board enters an Order approving this settlement, plus any extensions requested by the Respondents and granted by the Agency or the Board under the provisions of this paragraph G.

H. Said Respondents agree to file with the Agency a performance bond in the penal sum of \$125,000.00.

I. Said Respondents, jointly and severally, agree to pay a civil penalty of \$5000 in the aggregate. According to the Agency, such a penalty is necessary to aid in the enforcement of the Act, in view of the prior decision of the Board regarding said Respondents in PCB 71-29 and in view of the previous notice given to said Respondents regarding the violation of the Act cited in paragraph 15 of Count V of the Amended Complaint and in view of the amount of time that has elapsed since the date that final cover was due. Said penalty shall be payable in two (2) monthly installments of \$2,500.00 per month on the thirtieth (30th) and sixteenth (60th) calendar days after the date upon which the Board enters an Order approving this settlement.


I. All other allegations of the Complaint and the Amended Complaint, as they pertain to said Respondents, shall be dismissed with prejudice to the Agency.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
Complainant

By: Mike Murphy by DW
Its Director

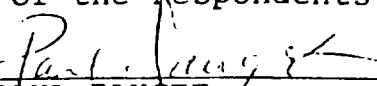
WILLIAM J. SCOTT, Attorney General

By: _____
Assistant Attorney General
ATTORNEY FOR COMPLAINANT

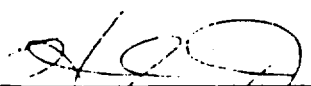


PAUL SAUGET
One of the Respondents

SAUGET AND COMPANY
One of the Respondents

By: 

PAUL SAUGET
Its President



HAROLD G. BAKER, JR.
56 South 65th Street
Belleville, Illinois 62223
(618) 397-6444
ATTORNEY FOR SAID RESPONDENTS

The term "suitable material" as found in Illinois Pollution Control Board Solid Waste Rules and Regulations, Chapter 7, Rule 305: Cover shall have the **following** definition: naturally occurring soils which allow minimal surface water infiltration, which are compactable, which will promote plant growth, and which have a low permeability, or, such other material as approved by the Environmental Protection Agency.

EXHIBIT A

Danville—First Monday in March
and September.

Cairo—First Monday in April and
October.

East St. Louis—First Monday in
May and November.

Benton—First Monday in June
and December.

United States Department of Justice

UNITED STATES ATTORNEY

EASTERN DISTRICT OF ILLINOIS

EAST ST. LOUIS, ILL. 62202

January 2, 1975

JUN 18 1982

U.S. — D.L.P.C.
STATE OF ILLINOIS

U. S. Department of Justice
Washington, D. C. 20530

Attention: Mr. Raymond W. Mushal, Attorney
Pollution Control Section

Re: Sauget and Company; Refuse Act violation,
dumping of landfill material into
Mississippi River

Your Ref: MG:RWM 62-26-38

Dear Sir:

I am in receipt of your letter dated October 24, 1974. This office, after a careful review of the file in the above-captioned case, has concluded that it is without merit and, therefore, has decided to decline prosecution. The various agencies involved in this matter and the attendant information supplied predicate a violation of Title 33, United States Code, Section 407, upon the latter part of that statute. The statute states in pertinent part, "... it shall not be lawful to deposit or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable river" It is apparent from the statutory language that it is necessary to demonstrate that the material in question was placed upon the "bank of a river." This element of proof is not present under the factual circumstances of the instant case. The material was deposited upon land well removed from the banks of the Mississippi River, as "bank" is defined by pertinent case law. It was due only to the unprecedented flood of 1973 that the waters of the Mississippi River reached the land of Sauget and Company and caused debris therefrom to be removed.

ST CLAIR Co.

Sauget / Sauget

RECEIVED
REGION III


JAN 3 1975

ENVIRONMENTAL PROTECTION AGENCY
STATE OF ILLINOIS

A violation of Title 33, United States Code, Section 407 could not be substantiated. Accordingly, this office has decided to decline prosecution in the above-captioned matter.

Very truly yours,

HENRY A. SCHWARZ
United States Attorney


By MICHAEL J. NESTER
Assistant United States Attorney

MJN:cs

cc: ✓ Mr. William C. Child
Regional Supervisor
Illinois Environmental Protection Agency
Region III, Springfield
2200 Churchill Road
Springfield, IL 62706